

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No: 8:21-CR-348-SCB-SPF

JEREMY BROWN

_____ /

**DEFENDANT’S MOTION FOR RECONSIDERATION OF DEFENDANT’S
MOTION FOR PRETRIAL RELEASE**

Defendant, JEREMY BROWN, through his undersigned counsel, and pursuant to 18 U.S.C. § 3142(f)(2), hereby moves this Court to reconsider its ordering denying Defendant’s Motion For Pretrial Release. Doc. 44. In support of this motion, Mr. Brown states the following:

1. On November 11, 2021, this Court denied without prejudice Mr. Brown’s Motion for Pretrial Release, which the Court construed as a motion to reopen his detention hearing. Doc. 44.
2. In the Order, the Court stated that the “new evidence” was known to Mr. Brown at the time of the detention hearing, and that “Brown does not contend that his character witnesses were ‘not known’ to him at the time of the detention hearing.” Id. at 2. As stated in more detail below, Mr. Brown does not contend that these character witnesses themselves were unknown to Mr. Brown at the time of the detention hearing, but the sum and substance of why they would each be

called to the stand to testify at a reopened detention hearing was most certainly unknown to Mr. Brown at the time of the detention hearing.

II. Standard

Section 3142(f)(2) of Title 18 provides that: “The [detention] hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.”

Reopening a detention hearing is therefore based on the demonstration of the following two factors: “(1) there is new information that did not exist or was unknowable by the defendant at the time of the hearing; and (2) the new information has a material bearing on the issue of whether there are conditions of release that will reasonably assure a defendant’s appearance at trial and the safety of any other person in the community.” United States v. Smith, 337 F.R.D. 366, 368 (N.D. Fla. 2020). Mr. Brown submits he has met both of these prongs as to the witnesses he intends to call at a reopened detention hearing.

III. Argument

The main purpose for the witnesses that Mr. Brown wishes to bring to the Court’s attention to at the reopening of his detention hearing are witnesses who

will speak about Exhibit 8, which was entered into evidence at the initial detention hearing. While it is true that Exhibit 8 was provided to defense counsel after business hours the night before the detention hearing, what neither counsel nor Mr. Brown could have anticipated was the Court's interpretation of the exhibit.

In its order denying bond and referring specifically to Exhibit 8, the Court stated that it was "particularly troubled by a sign Brown placed on the door of his residence in which he warned that 'FBI/DHS/USMS/HSCO' that they: 'Better bring a bigger Tactical PACKAGE.'" Doc. 17 at 2. At the hearing, the Court stated that "I find your statement, the sign made in Government's Exhibit 8, is a clear threat to law enforcement." Doc. 31, pg. 57 lns. 13-15. Additionally, the Court stated, "Quite frankly, Mr. Sansone, that's the biggest thing that I'm grappling with, is how am I supposed to fashion any kind of conditions of release where Mr. Brown would be anywhere other than jail when he flat out put the government, law enforcement, on notice that if they're going to come see him, they better bring a bigger tactical package." Id. pg. 46 lns, 21-25; pg. 47 lns. 1-2.

First, Exhibit 8 was not sent to counsel until after hours the night before the detention hearing, and Mr. Brown and counsel had no opportunity to substantively discuss this exhibit prior to the hearing. Second, and more importantly, neither counsel nor Mr. Brown could have anticipated the Court's interpretation of Exhibit 8 until the Court made its interpretation known at the hearing. And

certainly, neither Mr. Brown nor counsel could have had witnesses ready to testify about the Court's interpretation of an exhibit that was not known to counsel or Mr. Brown until the end of the detention hearing.

As Mr. Brown stated in his motion to reopen the detention hearing, after the initial detention hearing was conducted, counsel sent Exhibit 8 to six persons who have known Mr. Brown for years and informed these witnesses how the Court interpreted Exhibit 8. In his motion, Mr. Brown stated that: “[t]hese individuals have all seen Exhibit 8 and will testify at the hearing as to how they view that sign in light of their knowledge of Mr. Brown and the type of man they know him to be.” Doc. 27 at 5. There was no way for counsel or Mr. Brown to have anticipated how the Court might react to one of the 15 exhibits that the United States sent Mr. Brown the night before the detention hearing. Counsel would have had to be clairvoyant to have anticipated how the Court would interpret Exhibit 8, then sent Exhibit 8 to Mr. Brown's friends and colleagues and tell them to be ready to testify in rebuttal to the Court's interpretation of Exhibit 8. It was only after the hearing that counsel was able to send Exhibit 8 to Mr. Brown's friends and colleagues, all of whom had never seen the sign before, but more importantly, inform these friends and colleagues how the Court interpreted the message on Exhibit 8. Mr. Brown intends to call these witnesses to explain to the Court how they interpret Exhibit 8 in light of their knowledge of Mr. Brown and

how the Court misinterpreted the language of Exhibit 8. This is both new evidence that was unknowable at the time of the hearing, and evidence material to the issue of whether Mr. Brown poses a danger to law enforcement.

Both the Court and the United States rely on United States v. Pon, 2014 WL 3340584 (M.D.Fla. 2014) for the proposition that Mr. Brown has failed to demonstrate that the evidence he wishes to present to Court is new or was unknown to Mr. Brown at the time of the hearing. In Pon, the defendant moved to reopen to the detention hearing to discuss: 1) the actual ownership of a piece of property, 2) the circumstances sounding a motion for contempt previously filed by the defendant's wife, and 3) the reliability of GPS monitoring. *Id.* at *2. The court held that all of this evidence was known to the defendant at the time of the initial detentions hearing.

That is not the case with the Court's interpretation of Exhibit 8. The Court's interpretation was not known until the hearing was being conducted, and Mr. Brown's friends and college did not received a copy of Exhibit 8, along with the Court's stated interpretation of Exhibit 8, until after the hearing. Such evidence could not have been known prior to the hearing. Since both Mr. Brown's and his friends and colleagues' interpretation of Exhibit 8 is markedly different than the Court's interpretation, it would have been impossible and just plain unfair to suggest that Mr. Brown should have had these witnesses ready to testify about

Exhibit 8 at the initial detention hearing.

Undersigned counsel did address head on many exhibits presented to the Court on the date of the initial detention hearing. At the hearing, undersigned counsel directly addressed Exhibit 5, a 2014 Baker Act report, which counsel informed the Court was completely misleading as presented to the Court by the United States. Counsel also addressed the February 2019 missing person report, Exhibit 6, as well as Exhibit 7, which is a civil docket sheet concerning an injunction against Mr. Brown that was summarily dismissed by the State court judge.

Counsel did not and certainly could not have had six witnesses come to the initial detention hearing to rebut the Court's interpretation of Exhibit 8, which was not known until the Court pronounced its interpretation at the end of the hearing. So while it is true that these six witnesses, who are long time friends and colleagues of Mr. Brown, were certainly known to him prior to the detention hearing, their anticipated testimony at the reopening of a detention hearing, concerning Exhibit 8, was not known or knowable prior to the initial detention hearing.

The United States also relies on United States v. Cornelius, 2006 WL 1360923 (M.D.Fla. 2006) for the proposition that like the defendant in Cornelius, Mr. Brown has also failed to contend that the witnesses he wishes to present to the

Court were not known to him at the time of the hearing. However, in Cornelius, the defendant did not claim that the witnesses he wished to present at the reopening of a detention hearing would be called to specifically address the court's interpretation of piece of evidence submitted by the United States at the detention hearing. The witnesses in Cornelius were strictly character witnesses. Therefore, the court denied the request to merely call character witnesses, because these witnesses and their anticipated testimony was knowable at the time of the initial detention hearing.

The same is true for the United States misplaced reliance on United States v. Dillon, 928 F.2d 1412 (1st Cir. 1991). In Dillon, the court denied the motion to reopen the detention hearing in order to provide witnesses to “generally attest to [defendant’s] good character.” Id. at 1415. This is not the type of evidence these six witnesses will provide to the Court. The witnesses Mr. Brown will call at a reopened detention hearing will specifically address their interpretation of Exhibit 8 after having been informed of the Court’s interpretation of Exhibit 8. None of the cases supplied by the United States or this Court have a factual scenario wherein the defendant wishes to present evidence to the Court in direct rebuttal to an interpretation of a piece of evidence that was unknown to the defendant prior to the detention hearing.

The United States also argues that Mr. Brown should have requested a

continuance of the hearing to address issues that came up at the hearing and cites United States v. Ward, 235 F. Supp. 2d 1183, 1185 (N.D. Okla. 2002) in support. Doc. 43 at 13. In Ward, the court denied the defendant's motion to reopen the detention hearing because the witnesses the defendant wished to call were merely cumulative character witnesses. In addition, the court stated that the defendant had friends and family in the courtroom whom could have addressed the issue of the defendant's drug involvement. In addition, the court stated that the defendant could have asked for a continuance. Id. at 1185.

There are a number of factual differences in our case. First, the witnesses Mr. Brown intends to call are not cumulative character witnesses. Second, Mr. Brown did not have family and friends in the courtroom to address an issue that came up at the hearing. Third, Mr. Brown, unlike the defendant in Ward, did not know what his friends and colleagues would think about the Court's interpretation of a piece of evidence that none of them had ever seen. Therefore, to request a continuance based on what at the time would have been merely speculative additional evidence is not a basis for a continuance. It was only after the hearing that Mr. Brown and counsel found out what his friends and colleagues thought of the Court's interpretation of a piece of evidence none of them had ever seen. As such, to suggest that Mr. Brown should have requested a continuance to gather evidence that Mr. Brown did not even know existed is not a basis for this Court to

deny a motion to reopen the detention hearing.

In addition, at the hearing, the Court stated that the arresting officers had the advantage of surprise when arriving at Mr. Brown's house so Mr. Brown was not ready for their arrival. The Court stated that pre-trial services would not have this advantage and Mr. Brown would and could be ready for their arrival. The Court deemed this as an additional concern for the safety for those who would supervise Mr. Brown if granted bond. Specifically, the Court stated that "the government had the element of surprise when executing that search warrant, there's no indication that Mr. Brown knew that the government was going to execute a search warrant that day." Doc. 31, pg. 45, lns. 10-13. Neither Mr. Brown nor counsel could have anticipate this concern from the Court. After the hearing, counsel spoke with Ms. Kathy Chamberlin who gave counsel critical information directly addressing the Court's concern raised at the hearing.

In his motion for pre-trial release, Mr. Brown stated:

In addition, Kathy Chamberlin will testify that law enforcement left a message on Mr. Brown's voicemail the morning he was arrested. Mr. Brown told Ms. Chamberlin that he expected that law enforcement would come to the house that day. Therefore, Mr. Brown was not surprised when law enforcement arrived. However, even knowing law enforcement was coming, Mr. Brown posed no threat and was completely cooperative and respectful.

Doc.27 at 6.

Mr. Brown will call Ms. Chamberlin at the reopened detention hearing to directly address a concern the Court stated during the initial hearing and to

alleviate the Court's concern based on this additional evidence. Neither Mr. Brown nor counsel could have anticipated the need for Ms. Chamberlin's testimony prior to the initial detention hearing. Therefore, her testimony and the need for such was not knowable prior to the detention hearing and is certainly material to whether or not Mr. Brown poses a threat to law enforcement.

WHEREFORE, Mr. Brown moves for this Court to reconsider its order denying his motion to reopen his detention hearing.

Respectfully submitted,

s/William Sansone
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing notice has been furnished by electronic filing using the CM/ECF system to Risha Asokan, United States Attorney's Office, this 19th day of November, 2021.

s/William Sansone
WILLIAM SANSONE, ESQUIRE

